

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

## **I. DISPUTE**

1.
  - a. Whether there should be additional reimbursement for date of service 4-19-01?
  - b. The request was received on 3-25-02.

## **II. EXHIBITS**

1. Requestor, Exhibit 1:
  - a. TWCC-60 and Letter Requesting Dispute Resolution
  - b. HCFA 1450
  - c. EOBs
  - d. Reimbursement data
  - e. Medical Records
  - f. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent, Exhibit 2:
  - a. TWCC-60
  - b. EOBs
  - c. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. Per Rule 133.307 (g)(3), the Division forwarded a copy of the requestor's 14-day response to the insurance carrier on 7-15-02. Per Rule 133.307 (g)(4), the carrier representative signed for the copy on 7-16-02. The response from the insurance carrier was received in the Division on 5-31-02. Based on 133.307 (i) the insurance carrier's response is timely.
4. Notice of Medical Dispute is reflected as Exhibit #3 of the Commission's case file.

### **III. PARTIES' POSITIONS**

1. Requestor: per letter dated 6-25-02:  
“(Provider) charges the above-referenced services at a fair and reasonable rate. Specifically, these rates are based upon a comparison of charges to other Carriers and the amount of reimbursement received for these same or similar services. Specifically, this determination of fair and reasonable rate is based upon contractual agreements with the majority of Workers’ Compensation Carriers and payments of 85% of ‘usual and customary’ charges made by other Worker’s Compensation and Commercial Insurance companies.”
2. Respondent: No position statement

### **IV. FINDINGS**

1. Based on Commission Rule 133.307 (d)(1&2), the only date of service (DOS) eligible for review is 4-19-01.
2. As reflected by the Table of Disputed Services, the provider, an ambulatory surgery center, billed a total of \$5,871.53 on the DOS in dispute.
3. The Table of Disputed Services indicated that the carrier reimbursed \$637.00.
4. The EOB has the denial “F – Reduced to Fair and Reasonable”; “Included in Global”. However, the Provider has indicated in their Reconsideration Request Form dated 10-28-01, and position letter dated 6-25-02, that the charges billed are fair and reasonable.
5. Per the Provider’s Table of Disputed Services, the amount in dispute is \$4,663.03.
6. Provider has indicated in the letter dated 6-25-02 that “(Requestor) made an extensive review of payments and reimbursements made by various Carriers from the geographical area of Texas for treatment, services and supplies utilized for both work-related and non-work related injuries. As a result of that review, (Requestor) was able to determine the usual amounts reimbursed by Carriers for treatment, services, and supplies from (Requestor)...”.

### **V. RATIONALE**

The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401(a)(4) states ASCs, “shall be reimbursed at a fair and reasonable rate...”

Section 413.011(b) of the Texas Labor Code states, “Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual’s behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines.”

Rule 133.307 (g) (3) (D) places certain requirements on the provider when supplying documentation with the request for dispute resolution. The provider is to discuss, demonstrate, and justify that the payment amount being sought is fair and reasonable. Commission Rule 133.304 (i)(1-4) places certain requirements on the carrier when reducing the billed amount to fair and reasonable. Regardless of the carrier’s methodology or lack thereof, or a timely or untimely response, the burden remains on the provider to show that the amount of reimbursement requested is fair and reasonable.

Because there is no current fee guideline for ASC(s), the Medical Review Division has to determine, based on the parties’ submission of information, who has provided the more persuasive evidence. As the requestor, the health care provider has the burden to prove that the fees paid were not fair and reasonable. In this case, the provider submitted EOB(s) from other carriers that indicate those carriers paid varying percentages of the billed charges. The willingness of some carriers to reimburse at or near the billed amount does not necessarily document that the billed amount is fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011(b) of the Texas Labor Code. Therefore, based on the documentation available for review, the Requestor has not established entitlement to additional reimbursement.

The above Findings and Decision are hereby issued this 15<sup>th</sup> day of August 2002.

Lesa Lenart, RN  
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Medical Review Division

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